

Senate Bill No. 179

Passed the Senate May 8, 2003

Secretary of the Senate

Passed the Assembly August 28, 2003

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2003, at _____ o'clock __M.

Private Secretary of the Governor

└

CHAPTER _____

An act to add Section 2810 to the Labor Code, relating to contracts for labor or services.

LEGISLATIVE COUNSEL'S DIGEST

SB 179, Alarcon. Contracts for labor or services.

Existing law imposes various requirements on individuals contracting for labor or services with construction, farm labor, garment, janitorial, or security guard contractors.

This bill would provide that any person or entity who enters into a labor contract for construction, farm labor, garment, janitorial, or security guard services when the person or entity knows or should know that the contract does not provide funds sufficient to allow the labor contractor to comply with all applicable laws or regulations governing the labor or services to be provided under the contract, is subject to liability and specified civil penalties.

The bill would establish a rebuttable presumption that a person or entity entering into such a contract for labor or services does not violate the bill's provisions if the labor contract or material change to the labor contract meets specified requirements. The bill would not apply to persons or entities who have executed certain collective bargaining agreements, or to labor or services to be performed on a person's home residence or residences, under specified conditions.

The people of the State of California do enact as follows:

SECTION 1. Section 2810 is added to the Labor Code, to read:

2810. (a) A person or entity may not enter into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, or security guard contractor, where the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.

(b) There is a rebuttable presumption affecting the burden of proof that there has been no violation of subdivision (a) where the



contract or agreement with a construction, farm labor, garment, janitorial, or security guard contractor meets all of the requirements in subdivision (d).

(c) Subdivision (a) does not apply to a person or entity who executes a collective bargaining agreement covering the workers employed under the contract or agreement, or to a person who enters into a contract or agreement for labor or services to be performed on his or her home residences, provided that a family member resides in the residence or residences for which the labor or services are to be performed for at least a part of the year.

(d) To meet the requirements of subdivision (b), a contract or agreement with a construction, farm labor, garment, janitorial, or security guard contractor for labor or services must be in writing, in a single document, and contain all of the following provisions, in addition to any other provisions that may be required by regulations adopted by the Labor Commissioner from time to time:

(1) The name, address, and telephone number of the person or entity and the construction, farm labor, garment, janitorial, or security guard contractor through whom the labor or services are to be provided.

(2) A description of the labor or services to be provided and a statement of when those services are to be commenced and completed.

(3) The employer identification number for state tax purposes of the construction, farm labor, garment, janitorial, or security guard contractor.

(4) The workers' compensation insurance policy number and the name, address, and telephone number of the insurance carrier of the construction, farm labor, garment, janitorial, or security guard contractor.

(5) The vehicle identification number of any vehicle that is owned by the construction, farm labor, garment, janitorial, or security guard contractor and used for transportation in connection with any service provided pursuant to the contract or agreement, the number of the vehicle liability insurance policy that covers the vehicle, and the name, address, and telephone number of the insurance carrier.

(6) The address of any real property to be used to house workers in connection with the contract or agreement.



(7) The total number of workers to be employed under the contract or agreement, the total amount of all wages to be paid, and the date or dates when those wages are to be paid.

(8) The amount of the commission or other payment made to the construction, farm labor, garment, janitorial, or security guard contractor for services under the contract or agreement.

(9) The total number of persons who will be utilized under the contract or agreement as independent contractors, along with a list of the current local, state, and federal contractor license identification numbers that the independent contractors are required to have under local, state, or federal laws or regulations.

(10) The signatures of all parties, and the date the contract or agreement was signed.

(e) (1) To qualify for the rebuttable presumption set forth in subdivision (b), a material change to the terms and conditions of a contract or agreement between a person or entity and a construction, farm labor, garment, janitorial, or security guard contractor must be in writing, in a single document, and contain all of the provisions listed in subdivision (d) that are affected by the change.

(2) If a provision required to be contained in a contract or agreement pursuant to paragraph (7) or (9) of subdivision (d) is unknown at the time the contract or agreement is executed, the best estimate available at that time is sufficient to satisfy the requirements of subdivision (d). If an estimate is used in place of actual figures in accordance with this paragraph, the parties to the contract or agreement have a continuing duty to ascertain the information required pursuant to paragraph (7) or (9) of subdivision (d) and to reduce that information to writing in accordance with the requirements of paragraph (1) once that information becomes known.

(f) A person or entity who enters into a contract or agreement referred to in subdivisions (d) or (e) shall keep a copy of the written contract or agreement for a period of not less than four years following the termination of the contract or agreement.

(g) (1) An employee aggrieved by a violation of subdivision (a) may file an action for damages to recover the greater of all of his or her actual damages or two hundred fifty dollars (\$250) per employee per violation for an initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation, and,



upon prevailing in an action brought pursuant to this section, may recover costs and reasonable attorney's fees. An action under this section may not be maintained unless it is pleaded and proved that an employee was injured as a result of a violation of a labor law or regulation in connection with the performance of the contract or agreement.

(2) An employee aggrieved by a violation of subdivision (a) may also bring an action for injunctive relief and, upon prevailing, may recover costs and reasonable attorney's fees.

(h) The phrase "construction, farm labor, garment, janitorial, or security guard contractor" includes any person, as defined in this code, whether or not licensed, who is acting in the capacity of a construction, farm labor, garment, janitorial, or security guard contractor.

(i) (1) The term "knows" includes the knowledge, arising from familiarity with the normal facts and circumstances of the business activity engaged in, that the contract or agreement does not include funds sufficient to allow the contractor to comply with applicable laws.

(2) The phrase "should know" includes the knowledge of any additional facts or information that would make a reasonably prudent person undertake to inquire whether, taken together, the contract or agreement contains sufficient funds to allow the contractor to comply with applicable laws.

(3) A failure by a person or entity to request or obtain any information from the contractor that is required by any applicable statute or by the contract or agreement between them, constitutes knowledge of that information for purposes of this section.



Approved _____, 2003

Governor

